IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1373 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LUXMUN SUKHLALJI KALAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1373 of 2003

MR SN QURESHI for Petitioner No. 1

MS ARCHANA RAVAL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/06/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner detenu has challenged his detention order dated 4.1.2003 by which

the petitioner is detained under the PASA as "bootlegger". Along with the detention order, he was served with the grounds of detention which are of the same date. In the grounds, there is a reference about two criminal cases, which are filed against the petitioner under sections of 454, 457, 380 and 114 of Indian Penal Code. It is alleged against the petitioner that he is committing theft of various articles such as ornaments, watches, video camera etc. The detaining authority, after considering the said two criminal cases and after considering the statements of some witnesses, has detained the petitioner by way of preventive detention.

#. At the time of hearing of this petition, it is submitted by the learned advocate for the petitioner that the cases registered against the petitioner are the cases of theft and that both these cases are of individual in nature. It is submitted that, in both the cases, criminal cases are filed against the petitioner. It is submitted that, it cannot be said that by committing the aforesaid offence, there is a breach of public order. Learned advocate for the petitioner has relied upon the decision of this Court given in Special Civil Application No.12608 of 2002 dated 16/5/2003. This Court in para 3 has observed as under.:

"3. On behalf of the petitioner, it is argued that so far as aforesaid offences are concerned, these are all offences which relate to law and order situation as they are of individual in nature. It is submitted that it cannot be said that the petitioner committed breach of any public order by committing aforesaid offences of theft etc. In this behalf, reference is made to the decision of division bench of this Court in the case of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI V. POLICE COMMISSIONER, SURAT AND OTHERS, 2000 (1) GLC 393. In the aforesaid case, the division bench, in para 22 has held as under.

"So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the

maintenance of "law and order" and not "public order". The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an order of detention could have been passed by the detaining authority for maintenance of "public order", the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any other case. Appeal is accordingly allowed. No order as to costs."

#. Considering the aforesaid aspect of the matter, both the cases which are filed against the petitioner are the cases of theft by which the petitioner has committed theft of certain articles from the houses of individual and these are the offences punishable under Indian Penal Code, but, it cannot be said that by committing the said offence, there is a breach of public order which is essential for passing the preventive detention order. As a matter of fact, when a person is in the habit of committing similar type of offence, it is the duty of the Public Prosecutor in charge of such criminal cases to move the competent court for cancellation of the bail. Learned AGP has also pointed out that normally while granting the bail, such conditions are imposed by the Magistrate or by the competent criminal court so that such type of offence may not be repeated. So far as the present petition is concerned, the same is required to be allowed on the aforesaid ground, as, it cannot be said that there is a breach of public order.

#. In view of what is stated above, the petition is allowed. The order of detention dated 4.1.2003 is quashed and set aside. The detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J)
(pathan)